

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Kenneth Murchison,	)	
	)	<b>ORDER ADOPTING REPORT</b>
Petitioner,	)	<b>AND RECOMMENDATION</b>
	)	
vs.	)	
	)	Case No. 1:12-cv-071
State of North Dakota,	)	
	)	
Respondent.	)	

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Before the Court is Magistrate Judge Charles S. Miller, Jr.'s "Report and Recommendation" filed on September 12, 2012. See Docket No. 20. In the Report and Recommendation, Judge Miller recommends the following:

1. Murchison's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Docket No. 3) be **DENIED**;
2. The State's Motion to Dismiss Section 2254 Petition (Docket No. 8) be **GRANTED**;
3. The court certify that an appeal from the denial of this action may not be taken *in forma pauperis* because such an appeal would be frivolous and cannot be taken in good faith; and
4. A certificate of appealability not be issued.

See Docket No. 20, p. 7. Murchison filed an "Objection Abuse of Discretion Bias!" on September 28, 2012. See Docket No. 21. The State of North Dakota filed a response to Murchison's objection on October 9, 2012. See Docket No. 22.

The Court has carefully reviewed Judge Miller's Report and Recommendation, the relevant case law, and the entire record, and finds the Report and Recommendation to be persuasive. The habeas petition filed by Murchison is clearly time-barred. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 20) in its entirety and **ORDERS** as follows:

- 1) Murchison's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Docket No. 3) is **DENIED**;
- 2) The State of North Dakota's Motion to Dismiss Section 2254 Petition (Docket No. 8) is **GRANTED**;
- 3) The Court certifies that an appeal from the denial of this action may not be taken *in forma pauperis* because such an appeal would be frivolous and cannot be taken in good faith;
- 4) **ORDERS** that a certificate of appealability shall not be issued; and
- 5) Murchison's Motion to Strike (Docket No. 17) is **DENIED AS MOOT**.

**IT IS SO ORDERED.**

Dated this 9th day of November, 2012.

/s/ Daniel L. Hovland

Daniel L. Hovland, District Judge  
United States District Court